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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 ELIZABETH SINES, et al.,

4 Movants,

5 v.

20 mc 241 (KPF)

6 MILO YIANNPOULOS,

7 Oral Argument (Teleconference)

8 Respondent.

9 -----x

10 New York, N.Y.

July 29, 2020

11 11:30 a.m.

12 Before:

13 HON. KATHERINE POLK FAILLA,

14 District Judge

15 APPEARANCES

16 KAPLAN HECKER & FINK LLP  
Attorneys for Movants

17 BY: MICHAEL LOW BLOCH  
18 BENJAMIN WHITE

19 Pro-se for Respondent  
20 BY: MILO YIANNPOULOS

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1           DEPUTY CLERK: Counsel, before we get started there's  
2 a few things I need to go over before I bring in the Judge.  
3 This is a public courtroom, even if it's remote. And as such,  
4 members of the media and/or public have been known to dial in  
5 to listen to proceedings. And there are members of the public  
6 and media on the line.

7           I would just ask that for the court reporter's sake,  
8 that you identify yourself each time you speak so that way it's  
9 clear on who's speaking and the transcript will be accurate.  
10 The recording and/or rebroadcasting of this conference is not  
11 allowed. You will see a banner that comes up that says  
12 "recording has started." That is the Court's backup recording.  
13 We do have a court reporter on the line, and the court  
14 reporter's transcript is the official transcript of this  
15 conference.

16           Does anyone have any questions about the instructions  
17 that were just given?

18           The last thing is that there is an echo -- the one  
19 thing I'll ask is that if you're not speaking at any given  
20 time, you do put yourself on mute so that way it will cut down  
21 on the background noise and/or feedback. And when you do need  
22 to speak, just remember to unmute yourself.

23           (Case called)

24           MR. WHITE: Good morning, your Honor.

25           Ben White, from Kaplan Hecker & Fink, on behalf of the

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1 movants. I'm here with my colleague, Michael Bloch.

2 THE COURT: Thank you very much. Good morning to both  
3 of you.

4 Mr. White, it's between you and Mr. Bloch. To whom  
5 shall I be directing my questions?

6 MR. WHITE: You can direct your questions to me,  
7 your Honor.

8 THE COURT: All right. Thank you very much.

9 Mr. Yiannopoulos, are you able to see and hear me at  
10 this time?

11 MR. YIANNOPOULOS: Yes, I am, your Honor.

12 THE COURT: All right. Thank you very much.

13 Now let me speak to the parties about the nature of  
14 this proceeding. Normally this is a proceeding that I would be  
15 having by video. That doesn't make this proceeding any less  
16 judicial, and it doesn't make it any less serious. I want to  
17 be sure that you understand that.

18 Mr. White, to the extent that your client would  
19 otherwise have a right to have this proceeding take place in a  
20 courtroom in the Southern District of New York, are you waiving  
21 that right?

22 MR. WHITE: Yes, your Honor.

23 THE COURT: All right. And, Mr. Yiannopoulos, to the  
24 extent that you would have a right, sir, to appear in open  
25 court to talk about this motion to compel, are you waiving that

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1 right, sir?

2 MR. YIANNOPOULOS: Yes. And I'm grateful to you and  
3 to moving counsel for allowing this, because I wasn't able to  
4 attend due to COVID restrictions and not being in the states.  
5 So thank you both.

6 THE COURT: All right. Mr. Yiannopoulos, I've  
7 received in connection with this matter a series of materials  
8 from Mr. White and Mr. Bloch, and they include a motion to  
9 compel and exhibits to a motion to compel that were filed in  
10 June, on June 25th.

11 Did you receive those documents, sir?

12 MR. YIANNOPOULOS: Yes, I did.

13 THE COURT: As well, there were supplemental letters  
14 sent to me. I believe there were two on the 14th of July and  
15 one on the 20th of July.

16 Did you receive those as well?

17 MR. YIANNOPOULOS: Yes. They were kind enough to  
18 provide me with copies submitted to you. Yes.

19 THE COURT: All right. One moment, please.

20 (Pause)

21 THE COURT: I'm having a technical issue. I'm going  
22 to have to ask for your patience for a moment. Excuse me.

23 (Pause)

24 THE COURT: All right. I believe it to be resolved.  
25 Thank you.

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1 All right. You're all still able to see and hear me,  
2 correct?

3 MR. YIANNOPOULOS: Yes, your Honor.

4 MR. WHITE: Yes.

5 THE COURT: Thank you very much.

6 So, Mr. Yiannopoulos, in some of these submissions  
7 there were discussions that perhaps may have just been in the  
8 vein of puffery or not being serious. But there was discussion  
9 about you needing to be in a courtroom with a Bible. I've been  
10 a judge for a number of years, sir, and I've never sworn in a  
11 witness with a Bible. It doesn't make the swearing any less  
12 real. So I want to --

13 MR. YIANNOPOULOS: I'm sorry to interrupt, your Honor.  
14 I don't recognize that as being relative to me. I've never  
15 made any kind of statement along those lines. I think perhaps  
16 you might be talking about somebody else.

17 THE COURT: I hope I am, sir. That is --

18 MR. YIANNOPOULOS: No. I never mentioned a Bible in  
19 relation to this case or any other.

20 THE COURT: All right. And, sir, do I need to put you  
21 under oath?

22 MR. YIANNOPOULOS: You certainly could, your Honor. I  
23 am happy to -- to -- I do believe, if I may just very, very  
24 briefly explain. There are some things in various submissions  
25 from the movants that don't reflect very well on me. And I

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1 would like, with your permission, to extremely briefly explain  
2 why some of those are accurate. And at the end of that, if you  
3 would like to place me under oath, you're certainly welcome to  
4 do so.

5 Would it be all right if I just take two minutes to  
6 explain?

7 THE COURT: You may, sir.

8 MR. YIANNOPOULOS: Thank you.

9 The first thing I want to say to you, which you have  
10 no reason to know, is I am intensely sympathetic to the aims of  
11 justice in this lawsuit. I think the Unite the Right rally  
12 were discussing, if I understand coverage correctly in the  
13 media, which weapons to bring with them and the legal  
14 ramifications of various weapons. That seems to be a  
15 cut-and-dry definition of domestic terrorism. And I also don't  
16 believe they can hide behind the First Amendment if they were  
17 inciting and planning violence. I am in support of the  
18 objectives of this lawsuit and I'm not hostile to it. I see no  
19 more difference between the far right, Unite the Right, and --

20 THE COURT: Mr. Yiannopoulos, can I ask you just to  
21 speak up a little slower and a little louder so that the  
22 reporter can hear you? Thank you.

23 MR. YIANNOPOULOS: Absolutely.

24 So I truthfully, speaking plainly, am keen to see  
25 Richard Spencer and his friends bankrupt and languishing in a

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1 jail cell as the plaintiffs are. My reservation has been with  
2 the funders and organizers of this lawsuit, the ADL.

3 And there are some respects in which the submissions  
4 from the movants' counsel are true. I did, your Honor, mess  
5 them about a bit; that's true. And the reason for that is that  
6 I was aware of where this lawsuit was coming from and who was  
7 funding and organizing it. And this is an organization -- the  
8 ADL -- that has wrongly and very damagingly described me in a  
9 variety of hateful ways.

10 And I want to keep this brief, so I won't bore you  
11 with examples. But the ADL, which does a lot of ^ -- work,  
12 does, nonetheless, have the habit of calling conservative media  
13 personalities "extremists" on the basis of very flimsy  
14 evidence. I'm one of the people they've done that to. And  
15 they've done all kinds of other awful things. They said I have  
16 engaged in efforts to promote white identity, which is a  
17 heinous lie. And unfortunately, it's those horrendous  
18 allegations that have found their way into public court filings  
19 by plaintiffs' counsel too. They allege that I am a one-time  
20 ally of Richard Spencer, and nothing could be further from the  
21 truth. After a long history of published written work and  
22 videos going back to 2016, that's precisely the time that they  
23 alleged that I was an ally of Richard Spencer.

24 In January of 2017, I published a video on YouTube  
25 that said white nationalism is not the answer. I was

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1 disavowing explicitly him and his ideology at precisely the  
2 time they inferred that I was some kind of ally. And then the  
3 other work that the ADL has done to defend my character, it  
4 isn't an exaggeration to say that they, along with other  
5 organizations, have destroyed my life. And I was angry about  
6 that and I perhaps -- to the extent that I messed them around a  
7 little bit, because I wanted to find out how bad this situation  
8 was for Richard Spencer and the state of the lawsuit and just  
9 kind of wanted to find out what was going on and therefore  
10 inferred that I had all the ^ information I did, the extent to  
11 which that communicates any disrespect to the Court, I  
12 sincerely apologize; and to the extent that that communicates  
13 disrespect to the idea of the lawyers, I don't. But that's  
14 basically what was happening. And I just wanted to kind of  
15 figure out how bad it was for Richard Spencer. I have a long  
16 history of animosity towards him. But ideologically, he  
17 accepted a payment of \$10,000 to stage a video to make it look  
18 like I was singing to a group of white nationalists.

19 And it's important to note, by the way, I have not  
20 violated any of my obligations as far as the subpoena goes,  
21 because I don't have any materials that they're looking for  
22 other than the things that I publicly published on my YouTube  
23 channel, which I published as I received them. So there are  
24 two videos that I published that speak to Richard Spencer, both  
25 of which I believe fall under the scope of their subpoena.



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1 Those videos came to me on the day, or within 48 hours, of me  
2 publishing it. The second video, for instance, came to me --  
3 and I am perfectly happy to prove this to the Court with  
4 documents in evidence, if necessary. Long after the subpoena  
5 was issued, the second video came to me, and I published it  
6 almost immediately.

7 And so I understand that it might look like I was  
8 withholding material and dropping it on YouTube while I  
9 shouldn't have been giving it out, but that's not the case. I  
10 have complied with all of my legal obligations under the  
11 subpoena. And it's true that I did give their lawyers a bit of  
12 the run-around. And to the extent that that communicates any  
13 sort of disrespect to the Court, I apologize. And I probably  
14 shouldn't have done it.

15 The plain fact of the matter is I don't have  
16 anything -- other than the two videos -- relevant to any of the  
17 United the Right events. I just published those. And I  
18 remain, despite all of this, willing to help them if I can. I  
19 think it might be quite powerful to their case to have somebody  
20 who is perceived as being quite -- perceived as being very  
21 conservative, let's say, like me, testify against these  
22 defendants, which I would be perfectly happy to do based on my  
23 limited contact.

24 So I remain happy to help them with this lawsuit. I  
25 simply don't have the materials that they're looking for. And

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1 I'm very happy to comply with anything the Court might require  
2 of me, including investigation or reexamination of my devices  
3 and my email account to establish that to your satisfaction.  
4 Thank you.

5 THE COURT: Thank you for what I think is a summary of  
6 your view. I think I might want to ask a few followup  
7 questions. I will ask you, sir, please to raise your right  
8 hand and either swear or affirm. I don't know whether you are  
9 someone who will invoke a religion. Perhaps I'll just have you  
10 affirm.

11 MR. YIANNOPOULOS: I'm a Christian, but I'm perfectly  
12 happy to take whatever oath.

13 THE COURT: All right.

14 MILO YIANNOPOULOS,

15 called as a witness by the Court,

16 having been duly sworn, testified as follows:

17 BY THE COURT:

18 Q. All right. Sir, you did receive late last year, a subpoena  
19 in this case; is that correct?

20 A. Yes. It would have been during the Roger Stone trial in  
21 Washington, D.C., because that's where I was served, in the  
22 courthouse. So I believe that indeed that would have been  
23 where I was.

24 Q. Great. I'm given to understand that the subpoena was  
25 issued on November 5th of last year, and it required certain

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1 categories of documents. I also understand that sometime in or  
2 around mid December -- perhaps December 18th -- of last year,  
3 there was a meeting with plaintiffs' counsel where they agreed  
4 to narrow the scope of the subpoena?

5 A. That all sounds right to me. I wouldn't know the precise  
6 date without checking. But if that's what you have in front of  
7 you, I'm sure it's right.

8 Q. Okay. Well, I have a letter dated January 9th of this  
9 year. And it's a letter to you that was included in an exhibit  
10 in a document submitted to me. It was from Mr. Bloch. And it  
11 appears to reflect a narrowing of the subpoena to request audio  
12 and visual recordings --

13 A. So --

14 Q. I'm just going to ask you for the court reporter's benefit  
15 and my own if you could just let me finish question. Thank  
16 you.

17 A. I'm sorry. I'm sorry.

18 Q. The letter of January 9th, that's a letter of which you are  
19 familiar, sir?

20 A. Yes, your Honor.

21 Q. Do you have a copy of it with you now?

22 A. I can certainly pull it up if you'd like me to.

23 Q. I just want to make sure we're on the same page, as it  
24 were.

25 A. It's the only letter I've received from them, so it must be

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1 the same letter.

2 Q. Okay. It requires audio and visual recordings that you  
3 have in your possession relating to the Unite the Rights events  
4 in Charlottesville, Virginia on August 11th and 12th of 2017,  
5 and which were recorded in Virginia.

6 That's the first category, yes?

7 A. Yes. Yes.

8 Q. All right.

9 A. To the best of my recollection, yes.

10 Q. And what you're telling me now is that all that is  
11 responsive to that particular category of materials would be  
12 the two venues that you received at some date that was not  
13 November of 2019.

14 Is that correct?

15 A. Yes. So the subpoena was issued initially in response to a  
16 video that I published, which was really an audio extract of  
17 Spencer shrieking and yelling and dropping a number of racial  
18 slurs and various other things. And I felt that this kind of  
19 revealed the real Richard Spencer behind the nicely polished  
20 media character and I was quite anxious to, you know, see that  
21 come to light, so I published that. And in response to that,  
22 both the plaintiffs' counsel and the FBI got in touch with me  
23 and asked for -- well, the FBI was -- well, both of those  
24 contacts were a result of that first video.

25 Q. All right. I just want to ask my questions. I appreciate

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1 your answering them as I ask them.

2 And so this particular first video that you published  
3 that may have been the impetus for this subpoena was something  
4 that you did not yourself create, you received from someone  
5 else?

6 A. Correct.

7 Q. And do I also understand that it was published on your  
8 website within 48 hours of its receipt?

9 A. Yes. I published -- I posted it to YouTube and I also  
10 published an accompanying story -- a news report about it on  
11 the website of an online conservative media network that I have  
12 a show for.

13 Q. May I ask the name of the website on which your story was  
14 published?

15 A. Yes. It's Freespeech.tv and was rebranded as Censored.tv.  
16 So you'll have one of the two in front of you. And I published  
17 a story -- I'm not sure what happened to it online, but I'm  
18 happy to provide you with a copy of it if it's not available --  
19 which basically just explains the concept of the video, and  
20 went on to ask why the media was continuing to give a platform  
21 to somebody with these views, why he still had the accounts,  
22 why he was still apparently a regular featured public voice  
23 based on the horrendousness of the audio, which journalists  
24 have known -- at least some had some inkling of.

25 And I heard from a reporter at the *Washington Post* who

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1 is one of the people I used to verify that the voice was  
2 Spencer's, that he had heard similar things privately from  
3 Spencer too. And I asked him why the media had never reported  
4 on these things and instead focused on how dapper and  
5 well-dressed he was, treating him as some sort of cerebral  
6 intellectual movement leader rather than what he is, and that  
7 was the extent of the accompanying piece.

8 Q. Mr. Yiannopoulos, I'm just going to ask you to pause for a  
9 moment.

10 I should have mentioned this earlier on, but I did  
11 want to note that one of the things that the movants are  
12 raising is the fact that your objection would have been due  
13 within 14 days of receipt of this subpoena. I do appreciate  
14 that you were perhaps negotiating with them during that time to  
15 produce a narrowed quantity of materials. But to the extent  
16 that there's going to be discussion later on in this conference  
17 about bases for nonproduction, I did want you to be aware that  
18 the argument has been made that you lost your chance. I'm not  
19 making a final decision on that, I'm simply letting you know.  
20 And I think you're aware that that is the argument that they're  
21 making.

22 A. I'm aware that that's the argument they're making.

23 Q. All right. Sir, as you were telling me, upon the posting  
24 of this story -- this audio -- or video actually -- to YouTube  
25 and the accompanying news story, you were contacted both by

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1 counsel in this case and by the FBI.

2 Am I understanding your story?

3 A. That's right. They called me and asked me.

4 Q. Which "they" are we speaking of, sir?

5 A. Excuse me. I was handed a subpoena in the courtroom by  
6 plaintiffs' counsel, and the FBI called me on my cell phone and  
7 asked if they could meet me.

8 Q. I see. And did you, in fact, meet with the FBI?

9 A. Yes, I did.

10 Q. Is it something that you're able to discuss, sir?

11 A. For the most part, yes.

12 Q. May I understand -- well, you don't give me the specifics.  
13 But were there materials, be they documents, or video, or audio  
14 recordings, or anything that you gave to the FBI in the context  
15 of those meetings?

16 A. No. since I don't have -- I didn't have at that time  
17 anything additional to that one video itself, so I have no  
18 problem telling you that I hadn't given them anymore than I've  
19 given plaintiffs' counsel. Indeed, the first the FBI heard of  
20 the second recording was seeing it appear on my YouTube channel  
21 just like everybody else.

22 Q. All right. Mr. Yiannopoulos, obviously you've figured out  
23 why I asked that question. I would be sad if there were  
24 documents you produced to the FBI and did not produce to  
25 movants' counsel in this case.

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1 A. I'm aware.

2 Q. I'm not going to focus more on the FBI.

3 So you've used the term, "messaging them about a bit" in  
4 reference to plaintiff's counsel. And I think I need to know  
5 what that means, because certainly I'd be, again, sad. And the  
6 difference between movants' counsel and I is that I have  
7 contempt powers and they do not if you were messing about with  
8 me. So obviously you understand the seriousness of this  
9 proceeding.

10 But I need to understand, when you say "messaging them  
11 about," what did you do?

12 A. I do understand. And that's why in the statement that I  
13 gave you at the beginning I'll try to explain the difference  
14 between my conversations with them and the one that I'm having  
15 with you now. I do understand the seriousness and the  
16 difference.

17 I think what I meant -- what I meant by that post was  
18 that I think I alluded strongly without saying explicitly that  
19 I was almost certainly in possession of material that would  
20 assist their lawsuit. Now, I have a variety of sources who  
21 hold on to materials until they choose to give me them, to give  
22 me some sense of what those materials may contain. And that's  
23 what I was referring to briefly. I have asked and not been  
24 provided with any pertinent information from those sources.  
25 And in my own possession, I did spend some time and money just



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1 checking to make sure that -- I didn't want to get caught out  
2 having overlooked something accidentally -- just to ensure that  
3 the things that I was referring and I'd been told about -- just  
4 to make sure that I did not possess any of my backup hard  
5 drives and any location, anything that should fall apart. And  
6 I did not have such things.

7           So to the extent I was "messaging them around," it was  
8 strongly suggesting that I had material that would greatly  
9 assist their lawsuit. And the reason I did that is I wanted to  
10 kind of sound out more information about the suit really, and  
11 that turned into more aggressive and confrontational kind of  
12 situation. So that didn't pan out for me and I probably  
13 shouldn't have done it. And that's about it.

14 Q. And so did I understand you a moment ago to say that, while  
15 maybe in the land there are sources who you know about who  
16 might have information, they themselves always held on to  
17 materials, the information that they had?

18 A. Correct. And I have been, despite my attempts, unable to  
19 acquire it. However, one thing that did come in as a result of  
20 those initial inquiries, as a result of the inquiries that I  
21 made in a good-faith effort to comply with the subpoena,  
22 sometime later, I did receive that video, the second video,  
23 which I posted immediately publicly, provided it to everybody  
24 who was interested. Nothing else has come in since.

25 BY THE COURT:

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1 Q. One moment, please, sir.

2 Before you received and therefore released this second  
3 video, had you made a representation to movants' counsel that  
4 you had no responsive materials, or were you in the process of  
5 leading them to believe that you did?

6 A. I would have to check the dates since it temporarily  
7 escapes me when that video was published. If you just let me  
8 look, I can give you an answer. But I would have to look it up  
9 since I'm not --

10 Q. I believe it was April 6th of this year, sir.

11 A. When the video dropped?

12 Q. Yes.

13 A. Yeah. That sounds correct. So all we just have to do is  
14 compare that to the email in which I said that I didn't have  
15 responsive materials. I don't have the date, but I can  
16 certainly look it up for you.

17 Q. All right. Did you meet with them once or more than once,  
18 sir?

19 A. Do you mean the movants' counsel?

20 Q. Yes, sir.

21 A. I met with them once in their offices in the Empire State  
22 Building.

23 Q. And separate and apart from the one in-person meeting, were  
24 there telephone conferences or video conferences?

25 A. Not to my recollection. A few emails.

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1 Q. All right. If you are able from your records to note when  
2 that meeting took place, I would appreciate it. I'm sure  
3 movants' counsel has a date for it as well, but I want your  
4 recollection of it, first.

5 A. I could probably find out precisely for you, because I'm  
6 fairly sure it's on my calendar. So if you give me just a  
7 moment, I'll be able to return that very quickly for you.

8 Q. I will.

9 A. That would have been in mid December, we said, right?

10 Q. December is -- there's a letter to you dated January 9th,  
11 which suggests that your meeting took place prior to January  
12 9th.

13 A. If my records are correct, I believe it would have been  
14 4:00 p.m., Wednesday, December 11th.

15 Does that line up with what they say?

16 Q. I --

17 A. I think that we rescheduled it once, so there's a  
18 possibility that was the first penciled-in date and -- oh, you  
19 know what? I think it was. That was the first penciled-in  
20 date. And I believe we rescheduled it to 11:00 a.m. on  
21 Wednesday, December 18th.

22 Q. Okay. Thank you.

23 A. I have two entries for the December 18th in my calendar.  
24 And I remember it was rescheduled. So to the best of my  
25 ability to find out, I think that's what happened and I think

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1 that's what those two dates are.

2 Q. All right. And my understanding from my law clerk is that  
3 the meeting was the 18th and that the first email to them where  
4 you say you do not have responsive documents is February 12th  
5 of 2020?

6 A. That sounds correct. And at that time it was accurate and  
7 truthful that that claim -- the subsequent second video.

8 And just to reiterate, if I may, I'm perfectly able  
9 and willing and happy to demonstrate to the Court's  
10 satisfaction that I received that second video much later,  
11 within 48 hours of its publication and, therefore, when I said  
12 I didn't have responsive materials, that was entirely accurate.

13 Q. All right. So between February 12th and April -- let's  
14 just say early April, have you had any communications with  
15 movants' counsel?

16 A. If I did, they would have been by email. So I can give you  
17 a definitive answer very quickly. Let's see. I've got emails  
18 from December 12th. I believe Mr. Bloch would have been --  
19 looks like it was February 4th. I'll have a look. Yeah.

20 All right. So January 1st is when they said they  
21 would send me a letter about the reduced scope. January 20th,  
22 they give me a reminder that I'm running a bit late. And  
23 that's when I say on January 26th that I had been dedicating  
24 time and money to the process of reviewing materials. And I  
25 also make a reference to FBI requiring them exclusively should

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1 they come into my possession. So they, in any event, did not  
2 come into my possession. I did not supply any additional  
3 materials to the FBI. And, therefore, sometime later I simply  
4 reported that I had no relevant materials. Another email on  
5 January 26th, which was basically Mr. Bloch saying that they  
6 had extended the compliance date for me and that they were  
7 running out of time and wanted to get a move on. That, as far  
8 as I know...

9 Then they sent an email on January 30th, and I said I  
10 wouldn't be producing anything because I had nothing relevant.  
11 On February 7th, they responded -- Mr. Bloch responded and said  
12 basically that: When we met, you said you had a bunch of  
13 stuff, and now two months later, you say you've got nothing.  
14 On what basis are you refusing to produce?

15 I think this email -- I think the underlying  
16 supposition in this email is that I do, in fact, have  
17 materials, I'm simply refusing to produce them.

18 Q. Yes. Well, to be clear, you did leave them with that  
19 misimpression -- or impression.

20 A. That's correct. And I -- on revisiting my email of January  
21 30th, I do see that the way I phrased it might well have led  
22 them to believe that.

23 On February 7th, the underlying assumption of this  
24 email appears to be that I have materials that I am  
25 withholding; however, on January 30th, about a week before

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1 that, I do say in writing explicitly: I possess nothing that  
2 falls within the scope of our discussion, meaning the scope of  
3 the subpoena.

4 Now, I do say: I'm writing to let you know that I  
5 will not be producing any documents or recordings, as I possess  
6 nothing that falls within the scope of our discussion. And by  
7 "nothing," I meant nothing except for that first video, which  
8 everybody knew about because it was public.

9 So I had made the definitive explicit statement to  
10 them on January 30th that I did not possess any additional  
11 materials aside from that first recording; that was a true  
12 statement. And they wrote back to me, perhaps understandably,  
13 I have to say, understandably, and asked for more information  
14 about the basis for me withholding materials that they were  
15 convinced that I did -- and I understand why that may have been  
16 the case. I understand the reasons for their suspicions and  
17 skepticism; I do.

18 Q. All right. There was another email from you on the 12th.

19 And then was there radio silence until this motion to  
20 compel?

21 A. As far as I'm aware, that's right. I believe that June the  
22 24th was the first time I heard from them again; an email from  
23 Mr. Bloch letting me know that he was filing a motion to  
24 compel. To the best of my recollection, and according to what  
25 I have in front of me without, you know, doing any forensic

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1 search of my inbox, it looks as though that's accurate.

2 Q. All right. Right now today, sir, do you have any audio or  
3 visual recordings in your possession relating to the Unite the  
4 Right events and that were recorded in Virginia other than the  
5 two that we've been discussing in this conference?

6 A. No, your Honor, I do not.

7 THE COURT: All right. I'm going to turn now to Mr.  
8 White. And then, Mr. Yiannopoulos, I'll return to you a bit  
9 later.

10 Mr. White, before I ask you some questions, if there  
11 are additional dates or events that you wish to add to the  
12 chronology that Mr. Yiannopoulos and I have been putting  
13 together for the past few minutes, I will hear from you.

14 MR. WHITE: Thank you, your Honor. And good  
15 afternoon. And I'll just say, first, we appreciate your Honor  
16 conducting this hearing and giving this issue the sort of  
17 attention it deserves.

18 I think the Court has the proper chronology both laid  
19 out today at this hearing and also in our papers, so I don't  
20 think there's anything to correct on the dates. I'll take the  
21 opportunity to -- and I'll take your Honor's direction -- ask  
22 some questions. There are certain statements Mr. Yiannopoulos  
23 makes here today that I think require some clarification. If  
24 you'd like, I could offer those now or I could take  
25 your Honor's questions that you have planned to ask.

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1           THE COURT: I'll hear from you just because I've heard  
2 Mr. Yiannopoulos' statement. So I'll hear your disputed  
3 portions of that statement.

4           MR. WHITE: Sure. Thank you for that opportunity,  
5 your Honor.

6           I think most importantly, Mr. Yiannopoulos I do not  
7 believe is accurately characterizing the tenor of his  
8 conversations with movants' counsel on this matter,  
9 specifically with respect to the December 18th in-person  
10 meeting that Mr. Yiannopoulos and my colleague, Mr. Bloch, had  
11 at our offices. To be clear, Mr. Yiannopoulos was very certain  
12 at that meeting about the specific materials that he had that  
13 was responsive to our subpoena. We've identified in an  
14 affidavit attached to our motion the specific representations  
15 that Mr. Yiannopoulos made. And those include, describing with  
16 specificity, between 20 to 30 audio recordings describing  
17 individuals who were planning Unite the Right events, and  
18 specifically representing that the individuals contained in  
19 those recordings are defendants in our action.

20           But I think the most notable representation that Mr.  
21 Yiannopoulos made with specificity at the December 18th meeting  
22 was that he was in possession of a video showing one of the key  
23 defendants in our action, Richard Spencer, giving what Mr.  
24 Yiannopoulos determined to be a Roman salute, which we  
25 understand to be another name, a Nazi salute.



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1           Mr. Yiannopoulos described the possession of that  
2 video with specificity, which is notable principally because  
3 the April 6th, 2020, video that Mr. Yiannopoulos subsequently  
4 released on YouTube, after becoming in receipt of that video,  
5 depicted just that, depicted Richard Spencer providing a --

6           THE COURT: Mr. White, please pause. Thank you very  
7 much.

8           I want to be sure I understand what you're saying when  
9 you're telling me that Mr. Yiannopoulos was identifying  
10 materials in that December 18th meeting with specificity. If  
11 what you say is that he said he had a video of Mr. Spencer  
12 giving a Roman salute, all right, although it would not shock  
13 me that such a video existed since it was produced in April.  
14 But I'm not sure that that's the level -- if that's the level  
15 of specificity, they could have been either educated guesses or  
16 something short of actually identifying inventory materials  
17 they had.

18           But I need your help in understanding why I should  
19 believe that he was not just especially detailed in fabricating  
20 information when he met with your office on the 18th of  
21 December and he was, in fact, describing materials he then had  
22 in his possession.

23           MR. WHITE: Your Honor, it's a fantastic question.  
24 And we are in a difficult position because everything that we  
25 are relying on is based off the verbal representations of Mr.

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1 Yiannopoulos. We can provide the Court with as much  
2 specificity as we can about what he represented to us. And we  
3 can say that he represented to us that he was in possession of  
4 this material, that he had it at hand in a specific device that  
5 he identified in detail for us at the December 18th meeting,  
6 that he had also publicly laid in front of a camera on December  
7 3rd of 2018.

8 THE COURT: And what was the device?

9 MR. WHITE: Sure.

10 So, your Honor, on December 3rd, after we had issued  
11 Mr. Yiannopoulos a subpoena, and Mr. Yiannopoulos had confirmed  
12 publicly that he was in receipt of the subpoena, he recorded a  
13 video at which he described his possession of the materials he  
14 had regarding Richard Spencer and others. And he waved in  
15 front of the camera during that video --

16 Your Honor, I was describing the representation Mr.  
17 Yiannopoulos made on December 3rd in a video about the physical  
18 media on which he possessed material relevant to our underlying  
19 action.

20 THE COURT: Mr. White, if I may pause you. I have,  
21 for example -- I have your declaration and I have Mr. Bloch's  
22 declaration, and so I have the level of detail that is  
23 contained in that. I guess I'm asking if there's something  
24 additional to that, if there are details that are not recited  
25 in this declaration.

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1 MR. WHITE: I believe the declaration makes it out  
2 accurately. But the point I was trying to make, your Honor, is  
3 the consistency between what Mr. Yiannopoulos told us on  
4 December 18th and what he publicly waved in front of the camera  
5 on December 3rd. On December 18th, Mr. Yiannopoulos claimed  
6 the material was on a particular hard drive at his home in New  
7 York. On December 3rd, Mr. Yiannopoulos had waved what looked  
8 like a singular hard drive in front of the camera and claimed  
9 that that hard drive was what contained all of the materials,  
10 some of which is we think unquestionably responsive to the  
11 subpoena.

12 So all of this is a very difficult exercise,  
13 your Honor, because we're trying to figure out whether Mr.  
14 Yiannopoulos was lying then or whether Mr. Yiannopoulos is  
15 lying now. And we can provide indication we have that we think  
16 he was telling the truth then. Although obviously it's limited  
17 because we're basing our assumptions on what Mr. Yiannopoulos  
18 has told us. Fortunately, some of what he told us was  
19 subsequently confirmed, which casts doubt on the representation  
20 he's made to your Honor today.

21 We do think the Court is in a difficult position to  
22 figure out exactly how this issue is to be resolved. Mr.  
23 Yiannopoulos has admitted here today that he was lying to us.  
24 He refers to it as "messaging around." But messaging around in the  
25 context of a very expensive and complex litigation is a serious

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1 issue. And it's one that has cost our case and our clients  
2 considerable expense both in terms of distracting us as we had,  
3 for one, file this motion, and, two, negotiate with Mr.  
4 Yiannopoulos over the span of months in light of  
5 representations he made about having material that is directly  
6 relevant to the core issues that we're going to have to prove  
7 to a jury.

8 So we understand -- and I think Mr. Yiannopoulos has  
9 proposed today one possible solution which we think is just a  
10 minimal solution which will allow foreign inspection of the  
11 devices that he claims potentially possesses this material.  
12 And I think the starting point for that, your Honor, would be  
13 what he called "the vault." He has publicly stated that the  
14 vault contains information directly relevant to our case. He  
15 said today that that's not true. I think the only way to test  
16 that assertion is to allow someone apart from Mr. Yiannopoulos,  
17 potentially apart from the movants here, to test that  
18 assertion.

19 THE COURT: All right. I'll let you continue, sir, if  
20 there were other things that you wish to dispute or clarify.

21 MR. WHITE: Sure.

22 There's just one other I think that is important at  
23 the outset, which is that Mr. Yiannopoulos has said today that  
24 after we agreed to narrow the scope of the subpoena, he has  
25 then informed us that he has nothing that's within the scope of

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1 our discussion. And he says today that his reference to the  
2 scope of our discussion is broadly about the subpoena at issue.

3 We just point out, your Honor, that Mr. Yiannopoulos  
4 is attempting to take advantage of the revised scope of the  
5 alleged subpoena to any point he has nothing that is relevant  
6 and responsive to that amendment of the subpoena. And we think  
7 that obviously can't be held in court, your Honor. Mr.  
8 Yiannopoulos can't represent that he has certain responsive  
9 material -- for lack of a better term -- to amend the scope of  
10 that subpoena in light of those representations. And then to  
11 stand up and say, well, I have nothing, that responds to the  
12 more limited nature of what he ultimately asked for. I think  
13 just keeping that in context here is important. Our initial  
14 subpoena sought documents that is are significantly --

15 THE COURT: I'm trying to understand that. I'm also  
16 advised by my deputy that you might be doing better with the  
17 handset and not the headphones if you're using your phone as  
18 the audio for this, because you are coming in actually a bit  
19 muffled from this end. But let me pause and ask the court  
20 reporter whether she is able to understand you.

21 (Pause)

22 THE COURT: Mr. White, if you're able to use the  
23 handset and not the headphones, I would appreciate you doing  
24 that. If you can't or you're worried you'll disengage yourself  
25 from this call, then we'll do something else.

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1 MR. WHITE: Your Honor, I'm happy to take the  
2 old-fashioned method and use the phone on my ear, if that's  
3 okay.

4 THE COURT: I appreciate it. Thank you.

5 MR. WHITE: Your Honor, does this work?

6 THE COURT: It is better for me. So that's a start.  
7 Thank you.

8 Mr. White, what did you understand to be the status of  
9 the requests from your clients of Mr. Yiannopoulos? I mean, I  
10 see this January 9th letter.

11 MR. YIANNOPOULOS: I'm sorry, your Honor. I'm not  
12 able to hear anything you're saying.

13 THE COURT: Well, that's problematic.

14 (Pause)

15 THE COURT: Yes. Mr. Yiannopoulos, I can hear you,  
16 sir, although your video has frozen.

17 MR. YIANNOPOULOS: Sorry, your Honor. I wasn't able  
18 to hear any of your question. If that was directed at me, I  
19 don't know.

20 Could you possibly ask me again?

21 THE COURT: All right.

22 MR. YIANNOPOULOS: I just had a big lag. I'm so sorry  
23 if you weren't even talking to me. I just heard fragments and  
24 syllables for an extended period of time. So I'm sorry, I  
25 didn't catch any of that.

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1 THE COURT: Mr. Yiannopoulos, I was, in fact, speaking  
2 with Mr. White.

3 Are you able to hear and see me now?

4 MR. YIANNOPOULOS: Sorry. I can now. It's come back.  
5 Yes.

6 THE COURT: Well, we'll be grateful for that.

7 Mr. White, I suppose one problem is fixed and another  
8 one appears. But hoping that we can all continue, I will do  
9 that.

10 Sir, I had understood the subpoena to be narrowed.  
11 You're now saying because the narrowed subpoena was not  
12 complied with, you no longer wish to narrow it?

13 MR. WHITE: I think as a technical matter I was just  
14 pointing out to the Court that what is at issue here is our  
15 underlying subpoena. I think we understand the context of this  
16 dispute and where we're at in our pending trial date. So we  
17 are, as a case team, particularly focused on the materials that  
18 are responsive to the amended subpoena.

19 I've raised the issue with the Court fully to give the  
20 Court the context about Mr. Yiannopoulos' efforts here to  
21 comply with the subpoena in good faith.

22 THE COURT: All right. I think I understand that.

23 Other things you'd like me to know, sir?

24 MR. WHITE: I think that's all I have in terms of  
25 direct responses to Mr. Yiannopoulos' statements for the Court.

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1 And I'm happy to answer any questions that your Honor might  
2 have.

3 THE COURT: Well, sir, where we are right now is I  
4 have placed Mr. Yiannopoulos under oath and he has told me what  
5 he has told me under oath, under penalty of perjury, with my  
6 contempt powers and all of those things, and I'm trying to  
7 understand -- I mean, I can ask him some more questions. And  
8 it may just be that he was playing you, and your firm, and Mr.  
9 Bloch, and that's unfortunate and is a waste of time. But I'm  
10 not sure it means he has these responsive materials. It may  
11 just be he was a very detailed dissembler to you.

12 But I need to understand what evidence you have other  
13 than the quantity of detail in his discussions with you that  
14 would suggest that the representation he is making to me today  
15 are false.

16 MR. WHITE: I think, your Honor -- and at risk of  
17 going over issues we've discussed -- to us, the specificity  
18 with which Mr. Yiannopoulos referred to materials he had in his  
19 possession, in conjunction with the ultimate release of  
20 information that matched those descriptions, appears to us to  
21 be quite persuasive evidence that he was telling us the truth,  
22 at least in part, when he met with us on December 18th.

23 Further, I think your Honor is entitled to take into  
24 account Mr. Yiannopoulos' public representations here today  
25 under oath that he was lying to us when he negotiated the scope



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1 of the subpoena. Of course, we don't have direct physical  
2 evidence that Mr. Yiannopoulos committed perjury here today.  
3 We do have evidence that Mr. Yiannopoulos is one that doesn't  
4 take his obligations of candor seriously dealing with a duly  
5 issued subpoena.

6 And I think, given that context, we're not asking  
7 your Honor to issue an order of contempt. We're not asking  
8 your Honor to issue a finding that Mr. Yiannopoulos committed  
9 perjury today. We're simply asking your Honor to do what is  
10 available to just test the accuracy the representations that  
11 Mr. Yiannopoulos is making. And we think there are several  
12 devices available to do that that are common in discovery  
13 disputes similar to this.

14 And I think your Honor has the authority, for example,  
15 according to Rule 53, to appoint a master to take a look at the  
16 materials Mr. Yiannopoulos has described in detail to us as  
17 containing relevant information and to take a simple  
18 cost-effective look through those materials. Mr. Yiannopoulos  
19 has also offered today to provide his cell phone and his email  
20 addresses. And we think the Court should take him up on that  
21 offer and just test the assertions. We think it can be done  
22 quickly. And frankly, your Honor, it's one we've done before  
23 in this very case, given the challenges we've had from our very  
24 defendants in getting access information. So the process we're  
25 used to is a process we've had success with, and we think it's

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1 a reasonable approach here to test the assertions from someone  
2 who has candidly, publicly, and in court acknowledged that he  
3 has lied while negotiating the scope of a properly duly issued  
4 subpoena.

5 THE COURT: All right. Thank you.

6 Mr. Yiannopoulos, I am reminded of the declaration  
7 that was submitted by Mr. Bloch in connection with this motion.  
8 And I'm just going to go through the things that you are  
9 alleged to have said at this meeting on December 18th.

10 BY THE COURT:

11 Q. Did you, in fact, tell them that you had between 20 and 30  
12 distinct audio recordings ranging in length from ten minutes to  
13 two hours?

14 A. I told them that those audio recordings do exist but I do  
15 not possess them. I had been played portions of them by  
16 somebody else and I was unable to acquire them. I represented  
17 that I physically possessed files of them, which I did not.

18 Q. But have you actually, yourself, been privy or have heard  
19 between 20 and 30 audio recordings?

20 A. Not the complete recordings. I've seen them -- I saw on a  
21 screen that it was that number of files, but I did not listen.  
22 I was just played a couple of clips.

23 Q. Was this by one person or more than one person, sir?

24 A. By one person.

25 Q. And this is one of the sources to which you referred

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1 earlier?

2 A. Yes. It's the same sources that provided me with other  
3 things as well, specifically the second video, the second thing  
4 I posted on YouTube. I've been able to get things from this  
5 source partially, but this source has withheld I guess the  
6 stuff that plaintiffs' counsel really wants badly, and which I  
7 really want badly too. And I continue my efforts to --

8 Q. Stop. Stop. Stop. I don't want you to editorialize.

9 Thank you. I just want you to answer my questions.

10 A. Sure.

11 Q. All right. So when you told them that you could speak with  
12 such specificity because you had heard them and you had seen  
13 indications of their length and their number?

14 A. That's correct.

15 Q. How many of the between 20 and 30 did you listen to, even  
16 if for a little portion? All?

17 A. No. No, no, no. I would say -- I was played clips. I  
18 wasn't looking at the screen the whole time. And I was played  
19 a number of clips from the total collection. And I would guess  
20 no more than five of those recordings.

21 Q. Were those recordings, in fact, of Mr. Spencer and  
22 individuals associated with him?

23 A. They were a extremely poor quality. It was represented to  
24 me that they were all Jason Kessler and -- what's his name --  
25 Eli Kline, I think is the other one, and some of Spencer. I

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1 wasn't able to -- I can't confirm to you that that's accurate.  
2 I know that the recordings that I released to Spencer are  
3 accurate because I went to quite great lengths to verify them.  
4 The things that I was played over laptop speakers that were  
5 already of poor quality, I can't speak to whether or not they  
6 really were what I was told they were.

7 Q. All right. You also represented that you had a video of  
8 Mr. Spencer giving a Nazi is salute.

9 Did you, in fact, have that video?

10 A. No, but I was aware that at least five different videos  
11 exist of Spencer giving said salute. One of them is the video  
12 he was paid to stage in order to make life difficult for me.  
13 Another is the one I was aware of but -- well, I was aware of a  
14 couple of them floating around, because, as you'll note from  
15 watching the video, the second video is a room with an awful  
16 lot of people in it. And my understanding is that there are  
17 several different angles available of that event of which I  
18 came into possession of one of those recordings. I was aware  
19 of I think at least five recordings floating around people that  
20 showed Spencer giving this neo-Nazi salute -- this or Roman  
21 salute, as they like to say. And so I don't think it's much of  
22 a secret that those videos exist. And I don't think it was a  
23 secret in 2017.

24 Q. And when you say that you were aware of at least five, was  
25 that because you had seen them or because people had told you

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1 about them?

2 A. That would have been a mixture of being shown on other  
3 people's phones and being told about them. I think I've seen  
4 one or two. I would have to think about it. But I certainly  
5 haven't seen all five. But I've heard about a lot.

6 Q. All right.

7 A. And I've heard about them -- I've -- there are two events  
8 that I sometimes get confused, the Unite the Right one and,  
9 two -- one after the other and subsequent years, I believe. I  
10 sometimes have to check which is which. But I believe that  
11 there are videos out there of Spencer performing that gesture  
12 before or during both of those different events.

13 Q. I am told as well by Mr. Bloch that you represented during  
14 the December 18th meeting that the audio that you had publicly  
15 released, and that was the genesis of the subpoena to you, was  
16 of a meeting with Mr. Spencer on August 12th of 2017, including  
17 as well Mr. Kline, Mr. McClarin, Mr. Ponte (phonetic) and other  
18 unidentified people.

19 Was that, in fact, what that audio was?

20 A. Yes, your Honor. That information was provided to me with  
21 the video by the source. And I also did provide that same  
22 summary that I gave at that December 18th meeting to the FBI  
23 when I met them. That video was already public. All did I was  
24 tell them and provide them with a -- I just told them, I think,  
25 precisely what I said at that 18th meeting, which is the listed

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1 names that my source had provided as being people audible on  
2 the recording. So with respect to that specific thing that was  
3 already out there, all of that is correct.

4 Q. According to Mr. Bloch, you represented to the attorneys  
5 during this meeting that you had information on a single  
6 external hard drive which they are -- and perhaps you are  
7 describing as "the vault."

8 Did you make that representation to them?

9 A. Yes.

10 Q. Do you, either in the context of messing about with  
11 movants' counsel or other contexts, refer to this hard drive or  
12 any hard drive as a vault?

13 A. I have referred to it in many contexts. It's an absolute  
14 long-running -- I guess you would say an analogy, or a  
15 metaphor, or a meme for a variety of materials that I have on a  
16 variety of different people I've encountered in the ordinary  
17 course of my reporting. And social and professional encounters  
18 I tend to characterize it as a controversy of damaging material  
19 about dreadful people that I, you know, have reserved the right  
20 to release at my own time and for my own reasons.

21 And the vault, as a concept if you'd like, existed  
22 long before that specific -- was brandished on camera. It's  
23 something I've been referring to for I think many years now. I  
24 call it the vault. And I think I mean it more metaphorically.  
25 But that is true, I did brandish a video I think that said

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1 "Archive 2019" on a sticker, an external hard drive. But the  
2 vault, as it were, is really a description of the various  
3 things I've got up my sleeve about various previous reporting  
4 subjects.

5 Q. I see. And so it's not that hard drive or any specific  
6 hard drive, but it's how you refer to all the material you have  
7 -- damaging material?

8 A. It is how I metaphorically refer to all the damaging  
9 material I possess on people, although I have brandished the  
10 hard drive as though that was the physical vault and refer to  
11 it as the vault, certainly have that on camera. Plaintiffs'  
12 counsel is right about that. But the vault really is just a  
13 kind of -- it's an analogy that I've been using for some time.

14 Q. All right. However or whatever comprises the vault, does  
15 it include any audio or visual recordings relating to the Unite  
16 the Right events of August 12th and 11th, 2017?

17 A. Except for the two videos that have been released on my  
18 YouTube channel, no, it does not.

19 Q. All right. And do you consider those two videos to be part  
20 of the vault?

21 A. I don't know that they would ever have touched it. I mean,  
22 I don't know because the vault is typically stuff I would kind  
23 of want to store, you know, store away for a rainy day or for  
24 when it suits me, if you like. And I don't know that I would  
25 have stored those videos in any specific external location or

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1 stashed them anywhere else since I published them as soon as I  
2 got them. I think many places they would have existed would  
3 have been on the software and initially from the source, and  
4 then on the desktop of my computer, and then uploaded to  
5 YouTube and then probably into the recycle bin on the right. I  
6 don't know that they would have been retained anywhere. But to  
7 the extent that the vault was a metaphorical thing, I guess  
8 they would have within 48 hours been received and published.

9 Q. Well, to that very point, sir, after these videos were  
10 posted to YouTube, did you retain a copy of them or did you  
11 simply discard what you had received?

12 A. I felt no need to retain a copy, since the platform I  
13 received them on, they were still in there. So I didn't delete  
14 or locally store them. Since that platform has cloud storage,  
15 I knew I could retrieve them at any time. Also on YouTube, I  
16 didn't see any need to store a local copy, because you can  
17 always go into your YouTube studio and download copies of as  
18 many as you'd like. There was a copy on my local hard drive on  
19 one of my laptops. And I believe that that would have been on  
20 my desktop perhaps before I uploaded to YouTube, and that copy  
21 was probably almost certainly then put in the recycle bin and  
22 deleted.

23 It is possible -- just to be strictly accurate and  
24 entirely complete, I do sometimes put all of the sorted desktop  
25 into a download folder and then throw that onto an external



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1 drive just in case I ever need to find a screenshot from last  
2 April or download PDF that I can no longer locate. But I do  
3 that in somewhat scattered fashion; I'm terribly organized.

4 So it is possible that a version of that video is  
5 lingering somewhere on a hard drive somewhere for sure. I  
6 don't specifically recall storing it anywhere, because I didn't  
7 see the need to. But it's possible -- when I think about my  
8 workflow, it's possible that it is a movie file in a download  
9 from somewhere.

10 Q. All right.

11 A. If that makes sense.

12 Q. It does. I didn't ask this question because I didn't think  
13 I needed to but, I will ask it now.

14 When you've responded to me about your possessions or  
15 access to documents responsive to the narrow subpoena request,  
16 you were, I presume, including materials that you kept away in  
17 the vault for a rainy day?

18 A. Yes, of course, because that's precisely -- that would be  
19 the material that they're looking for, would it not? So, yeah.

20 Q. All right. One moment, please.

21 (Pause)

22 THE COURT: Mr. Bloch, if I could turn to you. And I  
23 appreciate your patience during this proceeding. I've been  
24 reciting and referring to things that you've identified for me  
25 in your declaration.

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1 But are there other details or other materials that  
2 were discussed in the December 18 meeting that I should be  
3 questioning Mr. Yiannopoulos about?

4 MR. BLOCH: I don't believe so. I think Mr. White has  
5 covered it pretty compellingly and comprehensively. I think it  
6 is fairly -- it's all captured in the declaration. And I don't  
7 think at this point that I have more facts to add.

8 THE COURT: All right. Thank you.

9 And, Mr. White, may I hear from you then, sir, in  
10 reply? I've asked the questions about what was discussed at  
11 the meeting. And I've gotten the answers that I've gotten.  
12 And you're going to tell me now why I oughtn't believe them.

13 MR. WHITE: Your Honor, I won't venture to go that  
14 far. I will just point out one thing we just heard from Mr.  
15 Yiannopoulos, which might need further clarification, which is  
16 that he purported to delete the video responsive to our  
17 subpoena at some point after receiving it without providing it  
18 to us. And I would point out to your Honor that obviously  
19 providing -- or publicly posting material is not sufficient to  
20 comply with a subpoena. I mean, we were fortunate enough to  
21 come across the video in our kind of diligence and  
22 investigation, but had we not, we wouldn't have come across  
23 that.

24 And we're learning now that Mr. Yiannopoulos, instead  
25 of producing that video to us, instead -- as he put it -- put

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1 it on his laptop and deleted it. And so I think that goes,  
2 again, towards Mr. Yiannopoulos' frame of mind for when he's  
3 complying with the subpoena, and it begs the question: What  
4 other evidence has either been on that laptop, the hard drive,  
5 the cell phone and been deleted as well? And, again, I think  
6 we're not asking the Court to make any ruling about Mr.  
7 Yiannopoulos' truthfulness. We're just asking the Court to  
8 allow us to engage in a process that can test that  
9 truthfulness.

10 And your Honor, I'll raise one other point in response  
11 to Mr. Yiannopoulos' response to your most recent questions,  
12 which is Mr. Yiannopoulos' defense now seems to be that the  
13 word "possessed," that was the fabrication, and that he didn't  
14 possess the material but some unidentified source possessed the  
15 material. Obviously that information is highly relevant to our  
16 case. And it sounds to me like Mr. Yiannopoulos has at least  
17 confirmed that the material exists, which is a very revealing  
18 statement for us to learn in court here today, because it means  
19 he wasn't lying about the existence of the material, he was  
20 simply lying about whether he possessed it. And so we think  
21 the Court should entertain some process by which Mr.  
22 Yiannopoulos should disclose what he knows about the source of  
23 that information so that the point of the underlying litigation  
24 can proceed to ascertain how they might obtain that  
25 information.

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1           And obviously Mr. Yiannopoulos is in a kind of unique  
2 position to know exactly who these individuals are that he met  
3 with, what they described to him, and how plaintiffs in this  
4 court frankly might be best situated to access those materials,  
5 which, again, if Mr. Yiannopoulos' statements in court today  
6 are true, are directly relevant to the fundamental issues that  
7 will be presented to the jury in October.

8           THE COURT: Mr. Yiannopoulos, when you were engaging  
9 in the December 18th meeting, is it fair to say that you did  
10 not fabricate material or responsive material, you simply  
11 fabricated possession -- you didn't make up stuff, you just  
12 made up whether you had it?

13           MR. YIANNOPOULOS: I think that's largely true. I  
14 don't think any of this has a transcript or a recording, so I  
15 wouldn't like to say that with certainty unless some kind of  
16 covert recording and it turns up that they --

17           THE COURT: They have different issues if they  
18 covertly recorded the meeting.

19           The issue is simply: We are trying as best we can to  
20 recreate what was discussed at the meeting.

21           MR. YIANNOPOULOS: I do understand that. I think it's  
22 mostly true -- the way that you put it to me is mostly true --

23           THE COURT: Mr. Yiannopoulos, I need you to repeat  
24 yourself. I'm getting every third word. So let's try that  
25 again.

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1           Where it ended for me is you said: How I would  
2 describe it, which was actually borrowing from Mr. White, was  
3 mostly true.

4           Now, please begin again.

5           MR. YIANNOPOULOS: Right. I believe that that is  
6 mostly true in the sense that I think the majority of materials  
7 that were discussed did exist. But I perhaps overstated my --  
8 slightly overstated my access to them or my possession of them  
9 in spinning the yarn, I guess, or enticing them to engage with  
10 me. I can't say with absolute certainty that that's the entire  
11 extent of it and that that characterizes all the materials we  
12 discussed, but I think it is at least most of them.

13           I mean, the plain fact remains that I did not possess  
14 those materials and I still don't, with the exception of the  
15 video I published.

16           THE COURT: All right. And I believe Mr. White's  
17 point, Mr. Yiannopoulos, is that particularly after receiving  
18 the subpoena -- and I would hope that if you take away one  
19 thing from this process is that subpoenas are real and they  
20 have significance and consequence.

21           You are not to discard materials that you received  
22 that might be responsive to a subpoena, even if you put them  
23 into a different format.

24           MR. YIANNOPOULOS: Judge, may I respond to that?

25           THE COURT: You may, sir.

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1           MR. YIANNOPOULOS: It's laughable and implausible to  
2 claim that they were just lucky to come across a publication on  
3 my YouTube channel when -- before, and during, and throughout  
4 this process. They spent a lot of money on the kind of sleazy  
5 opposition research that they are engaged in, which has done so  
6 much damage to my career. They've been watching me like a  
7 hawk. That's how they found the original video and that's why  
8 they issued the original subpoena. It's laughable to suggest  
9 that they were lucky to come across the second one. Published  
10 in that video was -- I appreciate that it might not have been  
11 specifically and exactly the process I was supposed to follow,  
12 for which I apologize to you. I probably should have sent them  
13 a copy of the file. Perhaps making it publicly available I  
14 guess I thought was -- you know, was the same thing, which  
15 perhaps it wasn't. And I'm sorry for that.

16           And I understand also an additional technical  
17 violation of the rules of the subpoena and the precise process  
18 I followed with the computer desktop situation, but I hope you  
19 understand that I was trying to explain it in clear detail in  
20 answer to your question about whether I still had a copy of it.  
21 So I was trying to be as open, and clear, and in detailed as  
22 possible. So I see the sharp legal minds have identified a  
23 little technical violation there on the fly. But I think that  
24 you understand what I was trying to explain to you when I said  
25 that.

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1 THE COURT: Yes. Now, please understand, sir, that  
2 I've listened to everything you've said and the fact that I  
3 haven't commented or responded to all of it doesn't mean I  
4 agree with that to which I do not respond. I take no position  
5 on some of the comments that you're making.

6 But there are sources, sir. You've gotten your  
7 material from sources, and you've seen from at least one source  
8 these audio files. You've been privy to them and have seen  
9 them.

10 What is your -- I mean, if I ask you right now to  
11 disclose the identity of that person, your response would be  
12 what?

13 MR. YIANNOPOULOS: Well, I don't think it would  
14 surprise you, your Honor. Like any other journalist, I'm a  
15 working professional journalist. I'm a *New York Times*  
16 bestselling author and award-winning investigative reporter. I  
17 think you know my response would be my career would be over  
18 tomorrow if I broke the confidentiality of sources like that.  
19 And my ability also to make life difficult for the defendants  
20 in this case would be severely damaged. If I were to burn one  
21 of my sources, I would burn them all and, you know, destroy my  
22 career. I hope that you can see that it's reasonable that I  
23 wouldn't want to do that. And I think it's a fairly  
24 well-established response from any working professional  
25 journalist that that's just untenable for me to be able to do

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1 that in open court in a public environment being reported on.  
2 That's just not possible.

3 THE COURT: Well, I do understand it, sir. I will say  
4 that I think I understand as well under federal law that there  
5 is such a privilege, but there are certain criteria to its  
6 assertion.

7 MR. YIANNOPOULOS: Right.

8 THE COURT: I now understand that you've asserted it.  
9 And I don't know that you've officially articulated all that  
10 has to be articulated, but I'm also not sure that I'm going to  
11 walk you through it at this point. I think the movants'  
12 counsel now has your position that you're not going to disclose  
13 the source, citing I presume the federal and New York state  
14 journalistic privilege.

15 MR. YIANNOPOULOS: Yes. I think there's a fairly  
16 well-established understanding, and it seems to be getting more  
17 enshrined in law and more, if you like -- I'm not a lawyer.  
18 But my understanding is that protection is becoming stronger  
19 with the trajectory of that general protection for journalists.  
20 And to the extent I'm able, I'd certainly like to assert it  
21 with respect to my source. I don't really need to assert it in  
22 respect to materials because I don't have anything additional.  
23 So I'm not trying to hide behind journalistic privilege and  
24 thereby not provide materials that respond to the subpoena.  
25 But with specific respect to my source, I think I would like



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1 to, because it would just -- it would be professionally  
2 catastrophic to me to break the confidence like that.

3 THE COURT: All right. I understand the contour of  
4 the journalistic privilege. I'm expecting Mr. White and Mr.  
5 Bloch to write to me if they think what we've discussed to  
6 today is insufficient. But I'm hearing you today to say the  
7 privilege you wish to assert as to the identification of the  
8 source. Because you've already told us about the materials,  
9 you just simply don't have them.

10 MR. YIANNOPOULOS: Right.

11 THE COURT: All right. I do understand that.

12 And, sir, Mr. White, or Mr. Bloch?

13 MR. BLOCH: This is Mr. Bloch. I'm sorry to  
14 interrupt. I don't know if this is a good point to jump in. I  
15 just wanted a point of clarification with respect to Mr.  
16 Yiannopoulos' assertion of journalistic privilege.

17 Just as a factual matter, one of the representations  
18 that he made to us during the course of our discussions -- this  
19 was on February 12th, 2020 -- was that there were, in fact,  
20 emails that were responsive to our subpoena that he purported  
21 to assert journalistic privilege over. And so as a factual  
22 matter, I wanted to clarify how that squares with the  
23 representations earlier about whether or not there is anything  
24 in his possession that is responsive to the subpoena. We were  
25 spending, understandably, time on the issue of audio and video

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1 files, but there was a request for documents as well, which Mr.  
2 Yiannopoulos purported to withhold on the basis of a stated  
3 journalistic privilege, which we do take issue with as a legal  
4 matter.

5 But I just want to clarify: Are there documents that  
6 Mr. Yiannopoulos has in his possession that he is withholding?  
7 And we didn't receive any privilege log or anything more  
8 specific other than the things that he's saying are privileged.

9  
10 THE COURT: All right. A couple points to that. Mr.  
11 Bloch, that may be in part because Mr. Yiannopoulos is  
12 proceeding under belief that a subpoena was narrowed to refer  
13 to -- or just to pertain to the recordings.

14 BY THE COURT:

15 Q. But, Mr. Yiannopoulos, I think -- I may have muddied the  
16 record, which certainly was not my intention. I asked you a  
17 few moments ago about whether the -- if you will, the sin that  
18 was committed at the December 18th meeting was that misstating  
19 materials or misstating your access to them.

20 A. Yes.

21 Q. Do you recall representing to movants' counsel that you  
22 also had emails that might be responsive to the requests that  
23 they were make something?

24 A. I don't recall that. I don't believe that I said that. I  
25 do have an email that I sent on February 12th, which I think

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1 where this is coming from. And that email says -- I was under  
2 the impression that --

3 Q. I need to you slow down for the court reporter.

4 A. This email from February 12th says:

5 "I was under the impression I was in possession of  
6 recordings for Richard Spencer and others, but was mistaken. I  
7 have consulted the source of these recordings who reminded me  
8 that they were played for me, but I did not retain copies of  
9 them. Other recordings in my possession do not relate to Unite  
10 the Right or planning of physical violence by any of the named  
11 defendants. So you are correct that I was proceeding under the  
12 assumption that the subpoena had been narrowed. That's exactly  
13 right."

14 And I go on to say: "Regarding anything else I  
15 possess tangentially related to your case, such as emails, I am  
16 asserting journalistic privilege."

17 So what I think I was trying to communicate through  
18 that is obviously I've got emails that refer to Richard  
19 Spencer, but they're not within the narrow scope of the  
20 subpoena and not relevant to your case, but in the ordinary  
21 course of reporting on the alt-right and on racist -- obviously  
22 I have vast numbers of emails of me discussing him, drafting  
23 texts about him, or whatever it is, not relevant to the case  
24 law's subpoena, but it would be extraordinarily burdensome to  
25 produce all of them. I'd have to take a month off work to do

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1 it, because he has obviously been the subject of wide and broad  
2 discussion.

3 When I was an editor at *Breitbart News*, we were  
4 speaking constantly about our frustration with how he was  
5 covered in the media and how best to draw a bright red line  
6 between us to make clear that there was a legitimate and  
7 respectable right emerging in America that had nothing to do  
8 with these people, which I believe we did both editorially and  
9 publicly. And those are the emails I was referring to when I  
10 said I'm going to have to keep those to myself, because many of  
11 them involve external sources and other people.

12 So when I said "tangentially related to a case," I  
13 suppose it was a pointless statement; it's got me in trouble  
14 because I was saying that stuff is not relevant to privilege,  
15 which is kind of pointless because I didn't have to produce  
16 that stuff anyway. So now that I revisit the wording, I see  
17 that perhaps I could have been more specific or retold that  
18 formulation.

19 Q. Well, Mr. Yiannopoulos, which is it? Are these emails  
20 responsive but burdensome, responsive but privileged, or not  
21 responsive at all?

22 A. They're not responsive at all. And it would have initially  
23 been burdensome for me to produce everything on every device  
24 going back -- what is it now -- half a decade that ever  
25 mentioned Richard Spencer, which was kind of the initial scope

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1 of the subpoena, which would have been an extraordinary  
2 undertaking to try to assemble and catalog and provide every  
3 communication I've ever had of any kind about him, or Jason  
4 Kessler, or any of the other named defendants.

5 That's what I meant when I was talking of burdensome.  
6 I wasn't trying to have it both ways. I was just explaining  
7 that obviously I've got lots of emails that mention his name,  
8 but there are no materials that are respondent to the subpoena  
9 in respect of planning or execution of Unite the Rights. And  
10 so I suppose it was redundant to assert privilege over them  
11 since they weren't responsive anyway.

12 Does that make sense? Do you see the --

13 Q. Well, I do. But I wish to follow up on that. My concern  
14 is the following:

15 If you have so many emails -- and presumably several  
16 sources -- that reviewing the emails was burdensome, how can  
17 you state to me with the certainty that you need to have when  
18 making a representation to a district judge that you do not  
19 have responsive emails?

20 A. Well, because I have never had information about Unite the  
21 Rights or I've never reported on it. I've never been in  
22 discussion with sources about it. I don't -- I mean, I  
23 don't -- let me consider that question for a second, if that's  
24 all right?

25 Q. Sure.

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1 A. Can I just take a moment to make sure that I'm being  
2 completely accurate?

3 Q. Yes.

4 A. So let me just start that again.

5 The subpoena that requires -- okay. I'm able to  
6 search my email, which I did, to see if there was anything  
7 pertinent for planning Unite the Right, which there wasn't.  
8 The burdensome component I'm talking about is comparing that to  
9 comply with the -- you know, the four methods necessary, the  
10 catalog. And that's the stuff that takes time. It's a fairly  
11 quick and easy process to search your emails and scan through  
12 emails and see if there's anything relevant to that. I know  
13 that there's nothing -- but I would have to, you know, do a lot  
14 of digging around there just to kind of prove what I already  
15 know.

16 So I did perform a search of my email, which is where  
17 all of my professional activity flows through, and saw that  
18 there were no conversations relevant to what they were looking  
19 for. But the business of cataloging and extracting and all of  
20 the rest of it is the thing that would take a long time. And  
21 that's what I was referring to as "burdensome."

22 Q. Mr. Yiannopoulos, in responding to me right now, I worry  
23 that you may have redefined the scope of the narrowed subpoena  
24 in that you were saying to me that you did not have emails  
25 regarding the planning of the Unite the Rights events and --

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1 A. In the political context.

2 Q. Mr. Yiannopoulos, I'm going to ask you to wait until I  
3 finish my question before responding.

4 What I heard you respond to a moment ago in discussing  
5 your emails were emails regarding the planning of the Unite the  
6 Right event or the associated violence or violence of that  
7 type. But I actually thought the narrowed subpoena was  
8 regarding the Unite the Right events not merely as planning.  
9 So for example, you had an attach of emails regarding attendees  
10 at the events or what they observed or things of that nature, I  
11 would think that that would be responsive. So why I'm asking  
12 this followup question is because you limited it to the  
13 planning of the events. And I thought the scope was broader  
14 than that.

15 A. I see what you mean now. Just emails that deals with the  
16 narrow scope, I was just reading.

17 Okay. So the narrowed scope of the subpoena does not  
18 refer to emails. It simply says: "We're requesting all audio  
19 and video recordings that you have in your possession related  
20 to this event" -- and they go on to say -- "any communications  
21 between you and the defendants that relate to Unite the Right."

22 So the emails that we're talking about now do, in  
23 fact, fall outside the scope of the ^ merely narrowed subpoena.

24 Q. All right. And so when you were spoke of --

25 A. I mean, that's kind of a technical point, I guess. I'm not

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1 trying to play, as we would say, "silly bags" (phonetic) in  
2 England. I'm not trying to be clever, or difficult, or  
3 slippery with you. But it is, as a matter of records, in fact  
4 the case that they were asking only for audio and visual  
5 recordings, and then any communications I had personally --  
6 directly with the defendants relating to Unite the Rights. And  
7 that is the scope of the narrowed subpoena. So a discussion of  
8 emails that broadly refer to the event would not fall within  
9 that scope.

10 Q. And so, Mr. Yiannopoulos, when you spoke earlier about  
11 emails regarding planning the event, you were misspeaking. Now  
12 that you understand, and now that you've been reminded of this  
13 second category of information that was sought, which was  
14 communications between you and any of the defendants in this  
15 case that relate to Unite the Right, are there any responsive  
16 emails that you possess now or once did possess that are  
17 responsive to that category?

18 A. Well, it says here --

19 Could you repeat the question? I just don't want to  
20 misspeak again.

21 Q. All right. Yes, I will. We've already talked about the  
22 recordings. I'm putting that to the side.

23 A. Yes.

24 Q. The other category of information that was sought in the  
25 narrowed subpoena --



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1 A. Yes.

2 Q. -- were communications between you?

3 A. Yes.

4 Q. Sir, the second category of information seeks  
5 communications between you and any of the individual defendants  
6 in the Sines case that relates to Unite the Rights, I am  
7 asking:

8 Do you now possess, or have you ever possessed,  
9 communications between you and any of the individual defendants  
10 that relates to the subject of Unite the Right?

11 Please answer that question.

12 A. I can. I need to check on one bit of information, which I  
13 can do very quickly, which is the list of defendants.

14 One thing I can tell you is that I have been in touch  
15 -- after everything we've been discussing that's happening, I  
16 have been in touch with Jason Kessler. I was attempting to get  
17 out of him damaging materials about Richard Spencer as part of  
18 my ongoing animosity with that personality. So I will have  
19 mentioned that event in the course of those conversations. I'm  
20 happy to provide that. That would have happened very recently  
21 within the last month or something.

22 And I just need to check here the list of defendants  
23 to see if -- let me just check now. If you can give me just a  
24 minute, I believe that there are -- I'm sorry.

25 THE COURT: Mr. White, did you provide a list of

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1 defendants?

2 MR. YIANNOPOULOS: Can you just read them to me? I'm  
3 sorry. I just don't have a copy of the complaint in front of  
4 me.

5 MR. WHITE: Your Honor, yes, I could read the list of  
6 defendants if that would be helpful.

7 THE COURT: How long a list?

8 MR. WHITE: It's a lengthy list. I believe it's 18.

9 THE COURT: Eighteen individuals?

10 MR. WHITE: And organizations.

11 THE COURT: Well, organizations as well.

12 All right. Mr. White, begin.

13 MR. WHITE: Jason, Kessler. Richard Spencer.  
14 Christopher Cantwell. James Alex Fields, Jr. Vanguard  
15 America. Andrew Anglin. Moonbay Holdings, LLC (phonetic).  
16 Robert Almador Ray.

17 THE COURT: Mr. Yiannopoulos, are you getting all of  
18 these names?

19 MR. YIANNOPOULOS: Yeah. I did find a copy of the  
20 complaint online, so I was listening and reading just to make  
21 sure that I have the same thing.

22 THE COURT: Thank you.

23 Mr. White, you may continue.

24 MR. WHITE: Nathan DiAmigo (phonetic). Elliott Kline,  
25 also known as Eli Moseley. Identity Evropa. Matthew Heimbach.

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1 Matthew Parrott, also known as David Matthew Parrott.  
2 Traditionalist Worker Party. Michael Hill. Michael Tubbs.  
3 League of the South. Jeff Shepp. Natural Socialist Movement.  
4 Nationalist Front. Augustus Sol Invictus. Fraternal Order of  
5 the Alt-Knights. Loyal White Knights of the Ku Klux Klan.  
6 East Coast Knights of the Ku Klux Klan, also known as the  
7 Eastcoast Knights of the True Invisible Empire. Michael Enoch  
8 Binovich (phonetic) who I will represent to the Court was  
9 dismissed from the case at the Rule 12(b)6 stage, but was on  
10 the list of defendants.

11 THE COURT: All right.

12 MR. YIANNOPOULOS: Thank you. That was helpful.

13 I can tell you that it's almost certain that I  
14 mentioned in the course of attempting to get materials from  
15 Jason Kessler about Richard Spencer -- these people are all now  
16 in this kind of ex-wife's club where they're all, you know,  
17 trying desperately to hurl each other under the bus with  
18 various agencies. So I saw an opportunity in that squabbling  
19 to get what I wanted journalistically, for my own reasons,  
20 about Richard Spencer. I thought this would be a good time  
21 that the other people would be willing to produce that.

22 So subsequent to everything we've been talking about,  
23 I did have discussions with Jason Kessler, which is all in  
24 text, which was not off the record. So I don't mind telling  
25 you that it happened. It's possible it was phrased Unite the

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1 Right Crux -- I can check for you right now. And I'm looking  
2 through the rest of the list now, and I've never been in  
3 contact with pretty much any of these people, with the  
4 exception of the first two in the course of reporting, and then  
5 a couple of DMs with Christopher Cantwell, and I quickly  
6 blocked him out of my inbox.

7 As far as the rest goes -- okay. Well, the subjects  
8 of identity just in the interest of being completely strict,  
9 and thorough, and accurate, the person who runs that has kind  
10 of rebranded Evropa as -- the initials are AIM. I don't  
11 remember what it stands for.

12 BY THE COURT:

13 Q. Mr. Yiannopoulos?

14 A. Yes.

15 Q. Have you had communications with the person who runs AIM?

16 A. Yes, I have. I don't believe that there is anything  
17 respondent in those communications. Again, I can check very  
18 quickly and decisively now for you. So if you give me perhaps  
19 two or three minutes, I can tell you decisively.

20 MR. WHITE: Your Honor, may I have a moment?

21 THE COURT: No. Let me finish my questions with Mr.  
22 Yiannopoulos and I'll give you a moment.

23 BY THE COURT:

24 Q. Mr. Yiannopoulos, are you able to check your communications  
25 with Mr. Cantwell?

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1 A. I certainly can retrieve that conversation just to make  
2 absolutely sure that there's nothing that's relevant to this  
3 case. And I'll do so right now. They're all on the same  
4 platform. So let me do that for you right now.

5 (Pause)

6 THE COURT: Mr. White, while he's doing that, I will  
7 listen to you.

8 MR. WHITE: Thank you, your Honor.

9 I just want to comment that it's quite perplexing --  
10 to me, at least -- that it seems like Mr. Yiannopoulos is  
11 engaging in this exercise in open court for the first time. Of  
12 course, the subpoena was issued to him in November of 2019.  
13 The subpoena was amended to cover the documents he's looking  
14 for now in open court on his computer shortly thereafter.

15 I think it just goes to the process Mr. Yiannopoulos  
16 has engaged in, whether or not he was ever purposely lying.  
17 But as to whether he diligently reviewed the materials he does  
18 have per responsive material -- and I think that lends further  
19 credence to dissolving some sort of outside process to  
20 undertake the path that Mr. Yiannopoulos seems to diligently be  
21 pursuing right now.

22 MR. YIANNOPOULOS: Well, I can respond to that, which  
23 is I did indeed review all of this stuff. But you're talking  
24 about -- I mean, in terms of the original scope and the  
25 original subpoena, I was just like, Oh, my goodness, what am I

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1 going to do about this? I have to take months off of work. I  
2 did read through all of this stuff, I just don't remember the  
3 tens of thousands of messages.

4 Okay. So the only thing that I can confirm to you --  
5 yeah. So I have nothing from anyone except Jason Kessler,  
6 which I mentioned to you a moment ago. And I'm happy to  
7 provide the Jason Kessler conversation immediately. But I will  
8 just point out to you that that conversation occurred on June  
9 13th.

10 BY THE COURT:

11 Q. That's all right. We'll take it. You can produce that.

12 You're saying Mr. Kessler's discussions were not  
13 responsive?

14 A. No, not at all. And the very first time I ever had direct  
15 contact with Jason Kessler was June 13th, a month and a half  
16 ago.

17 Q. All right. I'm sure Mr. White and Mr. Bloch would welcome  
18 those communications.

19 A. Yes. In fact, that wasn't the very, very first. I think I  
20 texted him, but it would have been about a week before that. I  
21 I'm very happy to provide those communications.

22 Q. All right. Mr. Yiannopoulos, let me pause you right there.  
23 I'd actually would prefer that we complete this process. And  
24 you'll know when we end this that you can make sure that you've  
25 gotten all of the responsive texts from Mr. Kessler. Because,

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1 to Mr. White's point, this is an analysis that could have been  
2 done contemporaneously with receiving the narrowed subpoena.

3 I want to make sure, Mr. Yiannopoulos, that you have  
4 reviewed the list of defendants and it is only those three  
5 defendants with whom you might have had communications that  
6 were responsive, and then having reviewed all of those  
7 communications, there's only one defendant with whom you have  
8 responsive communications?

9 Is that what you're telling me under oath, sir?

10 A. To the best of my knowledge, that's correct. I have  
11 exchanged text messages in the course of my reporting with  
12 Richard Spencer, but nothing that relates to the subpoena. And  
13 I would just also like to point out that the messages we're  
14 currently talking about with Jason Kessler, it's not like I'm  
15 just discovering it because I didn't do the homework before.  
16 This occurred on June 13th, very recently, and in the course of  
17 much more recent reporting. It's not the case that I didn't do  
18 the work properly or didn't respond to the subpoena fully.  
19 This just happened like a month ago.

20 Q. I understand, sir. I understand your position on that.  
21 What I'm saying to you: It is not often the case for me -- and  
22 I suspect the same can be said for Mr. White and Mr. Bloch --  
23 that folks are doing their review on the fly in the middle of a  
24 motion to compel hearing. So I can wait for your final answer  
25 as long as I know that it is your final and most accurate

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1 answer.

2 A. I do understand that. I think the reason that it's  
3 happened now is that these conversations were so -- since we've  
4 been discussing it, you know, there's a conversation that  
5 happens five weeks ago that is responsive that didn't exist  
6 before and therefore wouldn't have been part of any, you know,  
7 such process or research or whatever. So I think that's the  
8 reason that it's happening now.

9 And I do understand the seriousness, given full and  
10 complete and accurate attempts. As far as I can tell, the only  
11 additional thing that I may need to provide is one conversation  
12 recently. And, of course, it's not surprising because my --  
13 this is all being kicked off by a subpoena and by the Spencer  
14 videos. So the only thing that mentions -- as far as I can  
15 tell, the only thing that mentions Charlottesville, or Unite  
16 the Right, or anything like that is one conversation with Jason  
17 Kessler. And I'll make sure that's everything.

18 Q. All right. You will. Thank you.

19 THE COURT: All right.

20 MR. WHITE: Your Honor, if I may just respond to one  
21 point, Mr. Yiannopoulos made -- and we've even included this as  
22 an Exhibit to a letter that we filed with the Court on July  
23 20th, Mr. Yiannopoulos represented to myself and Mr. Bloch on  
24 July 14th, which is more than a month after supposed  
25 conversation with Jason Kessler, responsive to our subpoena,



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1 where Mr. Yiannopoulos said, quote: "Alas, I possess none of  
2 the documents or videos you are looking for."

3 So Mr. Yiannopoulos has made representations after  
4 that conversation had taken place that he's now acknowledging  
5 are not truthful.

6 MR. YIANNOPOULOS: Hang on. Hang on.

7 So the conversation with Kessler was June 13th. When  
8 are you suggesting that I --

9 MR. WHITE: I received an email from you on July 14th  
10 that was subsequently posted to your social media channel that  
11 that says: "I possess none of the documents or videos that you  
12 are looking for."

13 MR. YIANNOPOULOS: Right. I sent you a -- let's see.  
14 Sorry. I just want to be clear what we're talking about.

15 Okay. I guess based on timing, I suppose it didn't  
16 occur to me I had a more recent conversation. And I suppose I  
17 was speaking on the previous search I conducted and not on the  
18 stuff that was happening in the interim, perhaps. I can tell  
19 you that there's nothing you don't have already. The extent of  
20 my conversations with Jason Kessler consist of him sending me  
21 material that's already been publicly filed in various filings  
22 for this lawsuit and telling me stuff I already know and  
23 linking me to public information.

24 So, anyway, you'll get all that. But I think perhaps  
25 it didn't impress me because it's so recent that this could be

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1 relevant to the event in 2017, you know -- in direct  
2 communications. So therefore it is within the scope. And I'll  
3 go back and make sure.

4 THE COURT: All right. Mr. White, thank you. Your  
5 point is well taken. And I also accept Mr. Yiannopoulos'  
6 explanation.

7 MR. YIANNOPOULOS: I do understand that assertion, by  
8 the way. I do understand what he is saying, and he is  
9 technically correct.

10 THE COURT: Well, more than technically, sir. But,  
11 yes, he is correct.

12 Mr. Yiannopoulos, earlier in this conversation that is  
13 now finishing its second hour, you indicated to me that if I  
14 wanted to -- or you could prove to me or substantiate the  
15 claims you were making about the timing of your receipt of  
16 certain materials.

17 How do you propose to do that, sir?

18 MR. YIANNOPOULOS: I can -- if there's a mechanism by  
19 which something can occur under seal where I can show an  
20 officer of the Court, perhaps, the communications I had with my  
21 source, if it's under seal and doesn't go any further and never  
22 appears in documents, that's the furthestest I could go in  
23 endangering my relationship with my source. I certainly  
24 couldn't -- I couldn't run the risk of it appearing, you know,  
25 anywhere publicly or in the hands of anybody other than a Court

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1 officer. But I would be perfectly happy to show on my devices  
2 and provide any other sort of information that's necessary. I  
3 could show the conversation. I can show the precise moment in  
4 that conversation on my devices when the video was delivered to  
5 me.

6 So if there's a mechanism through which I could  
7 perhaps appear and provide that to the Court's satisfaction so  
8 that you know that it's accurate and true, without disclosing  
9 my source publicly, I would be comfortable doing that.

10 THE COURT: Mr. White, do you trust me to conduct an  
11 in-camera investigation of Mr. Yiannopoulos' materials? I'm  
12 being glib here by using the term "trust." His point is, he'll  
13 show me, he won't show you.

14 You okay with that? I am.

15 MR. WHITE: We're okay with it. I mean, there are  
16 other avenues to ensure that we maintain the confidentiality of  
17 the documents so that your Honor doesn't spend precious time,  
18 but we're happy to do that under a very strong protective order  
19 that we could negotiate with Mr. Yiannopoulos that only allows  
20 us to engage some sort of outside vendor to review the  
21 materials.

22 And the other point I would raise, your Honor, is it  
23 seems to me that Mr. Yiannopoulos is only referring to proof of  
24 his receipt of the two videos. So it sounds to me like he  
25 might be only offering up proof that he received certain videos

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1 and then released them shortly thereafter. It's our position  
2 that a more thorough review is needed to ensure his  
3 representations about what he possesses are also accurate.

4 We've learned today in court that for months he's now  
5 just been incorrect about what he possesses. And we just have  
6 very little faith that Mr. Yiannopoulos has engaged in any sort  
7 of thorough review of his devices such that we're confident  
8 that he doesn't have information relevant to our clients.  
9 While we're more than happy to have the Court undertake this  
10 review, we think it should be broader than the one it sounds  
11 like Mr. Yiannopoulos is proposing.

12 THE COURT: Okay. Thank you.

13 Mr. White, other than that last point about testing  
14 your substantiation for what Mr. Yiannopoulos is saying, is  
15 there anything else I should be addressing with you in this  
16 proceeding?

17 MR. WHITE: There is, your Honor. We've laid this  
18 out, although the scope has shifted with Mr. Yiannopoulos'  
19 representations. But we are certainly of the position that Mr.  
20 Yiannopoulos is not entitled to invoke any sort of reporter's  
21 or journalist's privilege. And we've identified the reasons  
22 for that in our paper. They are numerous. Apart from waiver,  
23 Mr. Yiannopoulos hasn't identified any purported privilege  
24 until months after receiving the subpoena. Apart from failing  
25 to properly attribute the documents he's claiming are

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1 protected, Mr. Yiannopoulos just simply can't satisfy the  
2 strictest to be protected by that privilege for the numerous  
3 reasons we've laid out in our papers. So we don't think that  
4 Mr. Yiannopoulos is entitled to withhold the name of his  
5 source, which he's attempted to do here today. And we think  
6 it's perfectly within the Court's power and discretion to issue  
7 an order compelling him to provide that information. And,  
8 again, that could be under the terms of a protective order to  
9 the extent Mr. Yiannopoulos wants protection of the ultimate  
10 source.

11 It's just clear to us from this hearing today that  
12 this source, if not Mr. Yiannopoulos -- if this source is in  
13 his possession, as Mr. Yiannopoulos confirms, and is material  
14 that would be front and center at trial in October, these are  
15 materials of individuals, as we understand it, of the violence  
16 that ultimately took place in Charlottesville, in violation of  
17 the KKK Act. And if what Mr. Yiannopoulos is saying is true,  
18 we think every effort should be undertaken on behalf of our  
19 client to ascertain that information.

20 And we're certainly not entitled to -- not keen to  
21 defer to Mr. Yiannopoulos' invocation of a broad public policy  
22 privilege we think he's not entitled to take advantage of. So  
23 we would appreciate the opportunity to allow the parties to  
24 further clarify the issue for your Honor. It sounds like we're  
25 focusing more on the source of the material rather than on the

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1 content. It sounds like Mr. Yiannopoulos is invoking the  
2 privilege as to the content, we're happy to provide further  
3 argument as to why he's not entitled to the privilege to  
4 protect the identity of the source. And we think the arguments  
5 will be very similar. And we're happy to provide the Court  
6 with color as to why we think there's just no basis for him to  
7 assert the privilege in this context.

8 THE COURT: I think that's fine. And I think there  
9 should be a schedule for such manner and Mr. Yiannopoulos  
10 should be heard on the issue as well, because this is my first  
11 opportunity to hear from him on these issues. And I think, and  
12 I would hope that as long as we've been at this this morning  
13 and this afternoon, he appreciates the seriousness and the  
14 gravity of the issues that are at play.

15 So how long do you want? Do you want two weeks to  
16 tell me why you think the source should not be protected?

17 MR. WHITE: Yes, your Honor, although we would -- I  
18 understand we're dealing with a somewhat unique situation. I  
19 mean, ordinarily it would be the proffering of the privilege  
20 that would justify and meet their burden to show why they don't  
21 have to produce the information. So we would normally propose  
22 that Mr. Yiannopoulos kind of go first, so to speak. But we're  
23 happy to, given the unique kind of context we find ourselves  
24 in. So two weeks is more than sufficient, we think. If we can  
25 have comfort at the extent of Mr. Yiannopoulos' basis for the

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1 privilege has been stated on the record here today. One of the  
2 issues we had in addressing this argument in our opening papers  
3 is we just didn't know what the basis of the privilege was.  
4 So, one, we are comfortable with the idea that this source of  
5 material that Mr. Yiannopoulos claims he possessed at the  
6 December 18th meeting, we're happy to brief the issue, but that  
7 source should be revealed.

8 THE COURT: All right. Mr. Yiannopoulos, to that  
9 point, have you been following my conversations with Mr. White  
10 just now?

11 MR. YIANNOPOULOS: I have.

12 I'd like to point out that the various materials I may  
13 have alluded to or referred to, I don't think absolutely  
14 everything was just that one source. So I think what we're  
15 really talking about is a couple of sources, perhaps. I just  
16 don't see how I can be compelled to reveal that without it, you  
17 know -- I'll have to look at what their argument is. But it  
18 seems -- what I will do -- I just want to reiterate that I am  
19 sympathetic to the aims of this lawsuit, and to that end, I  
20 will get in touch with this person and I'll ask if it would  
21 ruin their life for me to just give you the name, if that might  
22 speed all of this a little bit. Because I have found in the  
23 past that it's been quite ineffective and a much shorter way to  
24 deal with these things. But I have to get that permission. I  
25 have to get that okay.

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1 THE COURT: All right. But you've just begun this  
2 portion of the conversation by saying there may be more than  
3 one source.

4 To the extent that there are two or three, are you  
5 going to make that same request of all three of them?

6 MR. YIANNOPOULOS: I'm very happy to do so. I'll have  
7 to look and think and categorize what I've represented on  
8 December 18th, I think it was, and if it ends up being two  
9 people, I'll ask both; if it's three, I'll ask them; if it is  
10 in fact one, then I will make strong representations to that  
11 person.

12 THE COURT: All right. Mr. Yiannopoulos, the broader  
13 point that Mr. White is making is, to a degree, the conference  
14 today has involved a little bit of a moving target, because  
15 there was a certain statement made by you that you had nothing  
16 responsive, and then it turns out that you did have something  
17 responsive, and then it was the question of whether it was the  
18 content or the source that you had or that you were protecting.

19 So what Mr. White was just saying to me is he's  
20 prepared to tell me why he believes -- or he will be prepared  
21 to tell me why he believes that you cannot assert a  
22 journalist's privilege, but he doesn't want to begin the  
23 process of telling me why if you're going to change the playing  
24 field. So you've now told us today your bases for invoking the  
25 journalist's privilege. And it is with respect to, as I



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1 understand it, an identity of the source. It's not the  
2 materials, because the materials are not yours anyway.

3 Correct?

4 MR. YIANNOPOULOS: Yes. That sounds right to me.  
5 Yes.

6 THE COURT: I don't want "that sounds right." It  
7 needs to be correct.

8 MR. YIANNOPOULOS: Okay. All right. I believe that  
9 -- I think I've been pretty consistent from emails, so I don't  
10 know if moving target is quite fair. But I accept your  
11 characterization. And to put it plainly, the only thing I'm  
12 reluctant about handing over, the only thing that would cause  
13 catastrophic damage to me professionally and what seems to be  
14 in quite flagrant violation of well-established federal and  
15 state law and the rest of it, and, you know, well-understood  
16 principles of my profession is the identity of the person who  
17 provided me with certain materials. Everything else, I'm happy  
18 to provide because I want to help them.

19 THE COURT: Thank you.

20 Mr. White, that's the clarification you've gotten?

21 MR. WHITE: Thank you, your Honor.

22 THE COURT: All right. So Mr. White, I'm going to  
23 hear from you in two weeks telling me why I should not respect  
24 or allow the assertion of the privilege.

25 Mr. Yiannopoulos, I am going to need to hear from you

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1 in some way other than video conferences of this type.

2 Would you be able, within two weeks of receipt of Mr.  
3 White's materials, to explain to me why you believe the  
4 privilege should apply?

5 MR. YIANNOPOULOS: Absolutely your Honor.

6 I don't have the resources that the other side do. So  
7 I'll just be writing for myself as a private citizen. But I  
8 will do the best I can to lay the information out clearly and  
9 concisely and in a well-organized and helpful fashion. And  
10 I'll mimic the layout and format as best I can of the  
11 submissions as I understand it. And I'll certainly do that to  
12 respond to their response. Absolutely.

13 THE COURT: All right. And, sir, because you are not  
14 registered for the electronic filing that we have in this  
15 courthouse, in normal circumstances, you would be required to  
16 go through our pro-se office in this court. But instead, for  
17 this limited purpose, and given the time constraints that we  
18 have, you will be permitted to email your response to my  
19 chambers account, which is on the website of this court.

20 MR. YIANNOPOULOS: Thank you. And I also have the  
21 specific email address to one of your clerks, so I'll send it  
22 to both and cc both counsel as well.

23 THE COURT: Of course. All right.

24 On the issue of substantiation, I will think about  
25 what I want to do and how I want to receive that material, and

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1 you'll hear from me in due course.

2 Mr. White, I'm assuming that you're going to get a  
3 transcript of this conference? Is my assumption incorrect?

4 MR. WHITE: Your Honor assumption is correct,  
5 your Honor.

6 THE COURT: All right. Mr. White, we have tormented  
7 this court reporter for two hours. May we let her go?

8 MR. WHITE: That's fine.

9 MR. BLOCH: One point. Just a point of clarification.

10 If Mr. Yiannopoulos is going to check with his sources  
11 to see if they can be revealed, I would just ask that that be  
12 done expeditiously and not await the four weeks of the briefing  
13 schedule in part because, as your Honor's aware, we do have a  
14 trial date --

15 THE COURT: Of course.

16 MR. BLOCH: -- coming up on October 26th. So to the  
17 extent there's followup needed, we'll need time for that.

18 THE COURT: Mr. Yiannopoulos, may I order you -- and  
19 in fact, I am ordering you, within the next week to reach out  
20 to your source or sources and see if they will consent to the  
21 disclosure of their identities??

22 MR. YIANNOPOULOS: I will do so without delay.

23 THE COURT: I thank you.

24 Mr. Bloch, I appreciate you calling that to our  
25 attention because you would be the one having to do all of this

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1 work. We want to find out. Thank you.

2 MR. BLOCH: Yes, your Honor.

3 THE COURT: All right. With that, and with my thanks  
4 to each of you, and with my wishes for each of you for safety  
5 and good health during this pandemic, we are adjourned.

6 Thank you. You may leave the call.

7 MR. YIANNOPOULOS: Thank you, your Honor.

8 MR. BLOCH: Thank you, your Honor.

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